

ESTTA Tracking number: **ESTTA364887**

Filing date: **08/25/2010**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Houston McLane Company, Inc.
Granted to Date of previous extension	08/29/2010
Address	Union Station at Minute Maid Park 501 Crawford, Suite 400 Houston, TX 77002 UNITED STATES
Attorney information	Elise Kasell Cowan Liebowitz & Latman 1133 Avenue of the Americas New York, NY 10036 UNITED STATES eck@cll.com, trademark@cll.com Phone:212-790-9200

Applicant Information

Application No	77693781	Publication date	03/02/2010
Opposition Filing Date	08/25/2010	Opposition Period Ends	08/29/2010
Applicants	A&V Sports Inc. 911 Rose Creek Trail Woodstock, GA 30189 UNITED STATES DAC Sports, Inc. 5964 Seven Oaks Drive Powder Springs, GA 30127 UNITED STATES		

Goods/Services Affected by Opposition

Class 035. First Use: 2007/12/19 First Use In Commerce: 2007/12/19
All goods and services in the class are opposed, namely: Wholesale distributorships featuring discount books, discount cards and food products for others to sell for the purpose of fundraising

Grounds for Opposition

Other	See attached pleading.
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Attachments	Letter to Commissioner GAMEDAY MARKETING and Star Design NOO.pdf (1 page)(46593 bytes) GAMEDAY MARKETING and Star Design NOO.pdf (6 pages)(111855 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Elise Kasell/
Name	Elise Kasell
Date	08/25/2010

Cowan, Liebowitz & Latman, P.C.

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August 25, 2010

By Electronic Filing

Commissioner for Trademarks
Attn: TTAB
P.O. Box 1451
Alexandria, VA 22313-1451

Re: Houston McLane Company, Inc.
Notice of Opposition Against
A&V Sports Inc. and DAC Sports, Inc.
Application to register GAMEDAY MARKETING and Star
Design
Ref. No. 21307.015

Dear Commissioner:

We enclose a Notice of Opposition against Application Serial Number 77/693,781 published in the Official Gazette on March 2, 2010. Contemporaneously with the electronic filing of this Notice of Opposition, we are arranging for an electronic payment in the amount of \$300 to cover the filing fee.

If the amount received is insufficient and additional fees are required, please charge our Deposit Account No. 03-3415.

Please address all future correspondence to the attention of Mary L. Kevlin of Cowan, Liebowitz & Latman, P.C.

Respectfully submitted,

/Elise Kasell/
Elise Kasell

Enclosures

cc: Ms. Diane Kovach (w/encs. – by fax)
Mary L. Kevlin, Esq. (w/encs.)
Richard S. Mandel, Esq. (w/encs.)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In re Application Serial No. 77/693,781
Filed: March 18, 2009
For Mark: GAMEDAY MARKETING and Star Design
Published in the Official Gazette: March 2, 2010

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HOUSTON MCLANE COMPANY, INC.,	:
Opposer,	:
	:
v.	:
A&V SPORTS INC. AND DAC SPORTS, INC.,	:
Applicants.	:
-----X	

Opposition No.

NOTICE OF OPPOSITION

Commissioner for Trademarks
Attn: Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

Opposer, Houston McLane Company, Inc. ("Opposer"), a Texas corporation, with offices at Union Station at Minute Maid Park, 501 Crawford, Suite 400, Houston, Texas 77002, believes that it will be damaged by registration of the mark GAMEDAY MARKETING and Star Design shown below,



("Applicants' Mark"), in International Class 35 for "Wholesale distributorships featuring discount books, discount cards and food products for others to sell for the purpose of fundraising" as shown in Application Serial No. 77/693,781 (the "Application"), and having been granted extensions of time to oppose up to and including August 29, 2010, hereby opposes the same.

As grounds for opposition, it is alleged that:

1. Opposer is the owner of the renowned HOUSTON ASTROS MAJOR LEAGUE BASEBALL club.

2. Since long prior to December 19, 2007, Applicants' claimed first use date, Opposer, its predecessors, and their affiliated and related entities, licensees and/or sponsors have used marks that comprise or contain star designs, including but not limited to various open five-

point, star designs in the following distinctive stylizations,



alone or with other word, letter and/or design elements (the “Opposer’s Star Design Marks”), in connection with baseball games and exhibition services and a wide variety of goods and services, including, but not limited to, fundraising services, food products, clothing, sporting goods, toys, paper goods and printed matter and novelty items.

3. Opposer owns U.S. federal registrations and applications for Opposer’s Star Design Marks in International Classes 6, 9, 14, 16, 18, 21, 25, 26, 28, 35 and 41; namely, Registration Nos. 883,810, 1,748,631, 1,815,179, 2,082,732, 2,655,871, 2,703,751, 2,712,700, 2,803,116, 3,370,323, 3,652,902, 3,652,903, 3,363,259, 3,363,258, 3,664,515, 3,366,721,

3,366,722, 3,779,531 and 3,779,532 and Application Serial Nos. 77/818,629, 77/818,634, 77/818,645, 77/818,649 and 77/818,609 for said trademarks and service marks. Registration Nos. 883,810 and 1,748,631 are incontestable. Registration No. 2,712,700 is partially incontestable.

4. Since long prior to December 19, 2007, Applicants' claimed first use date, Opposer, its predecessors, and their affiliated and related entities, licensees and/or sponsors have promoted and advertised the sale and distribution of goods and services bearing or offered in connection with Opposer's Star Design Marks, including, but not limited to, baseball games and exhibition services and a wide variety of goods and services, including, but not limited to, fundraising services, food products, clothing, sporting goods, toys, paper goods and printed matter and novelty items and have sold or distributed such goods and rendered such services in commerce.

5. As a result of the sales and promotion of its goods and services bearing or offered in connection with Opposer's Star Design Marks, Opposer has built up highly valuable goodwill in Opposer's Star Design Marks, and said goodwill has become closely and uniquely identified and associated with Opposer.

6. On March 18, 2009, Applicants filed the Application for Applicants' Mark for "Advertising and promotional services, namely, providing specialty products, including discount books, discount cards and food products for others to sell for the purpose of fundraising" in International Class 35, claiming a first use date of December 19, 2007. Subsequently, as a result of an Office Action, Applicants amended their specification of services to "Wholesale distributorships featuring discount books, discount cards and food products for others to sell for the purpose of fundraising."

7. Upon information and belief, Applicants did not use Applicants' Mark for the services covered in the Application in United States commerce prior to their claimed first use date of December 19, 2007.

8. The services covered by the Application are closely related to the goods offered and services rendered in connection with Opposer's Star Design Marks.

9. Upon information and belief, Applicants are using Applicants' Mark in the identical trade dress colors of Opposer's HOUSTON ASTROS MAJOR LEAGUE BASEBALL club.

10. Applicants' Mark so resembles Opposer's Star Design Marks as to be likely, when used in connection with Applicants' services, to cause confusion, to cause mistake, and to deceive the trade and public, who are likely to believe that Applicants' services have their origin with Opposer and/or that such services are approved, endorsed or sponsored by Opposer or associated in some way with Opposer. Opposer would thereby be injured by the granting to Applicants of a certificate of registration for Applicants' Mark.

11. Opposer would be further injured by the granting of a certificate of registration to Applicants because Applicants' Mark would falsely suggest a connection between Applicants, which are not connected with or authorized by Opposer, and Opposer.

WHEREFORE, Opposer believes that it will be damaged by registration of Applicants' Mark and requests that the opposition be sustained and said registration be denied.

Please recognize as attorneys for Opposer in this proceeding Mary L. Kevlin, Richard S. Mandel and Elise C. Kasell (members of the bar of the State of New York) and the firm Cowan, Liebowitz & Latman, P.C., 1133 Avenue of the Americas, New York, New York 10036.

Please address all communications to Mary L. Kevlin, Esq. at the address listed below.

Dated: New York, New York
August 25, 2010

Respectfully submitted,

COWAN LIEBOWITZ & LATMAN, P.C.
Attorneys for Opposer

By: /Elise Kasell/

Mary L. Kevlin
Richard S. Mandel
Elise Kasell
1133 Avenue of the Americas
New York, New York 10036
(212) 790-9200

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on August 25, 2010, I caused a true and correct copy of the foregoing Notice of Opposition to be sent via First Class Mail, postage prepaid, to Applicants' Correspondent of Record, David Lilenfeld, Lilenfeld PC, Suite 720, 2964 Peachtree Road, N.W., Atlanta, Georgia 30305.

/Elise Kasell/
Elise Kasell